

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

NESTOR LONDONO, §  
§  
*Plaintiff*, §  
§  
v. § CIVIL ACTION NO. 4:24-cv-04695  
§  
HOUSTON INDEPENDENT SCHOOL §  
DISTRICT, §  
§  
*Defendant*. §

**DEFENDANT'S MOTION TO DISMISS PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(5)**

Defendant Houston Independent School District (“HISD” or “the District) files its Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) as follows:

**Nature and Stage of Proceedings**

On January 7, 2025, HISD was served with the two-page summons for this case. *HISD was not served with a copy of the lawsuit.* HISD moves to dismiss this matter for insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5).

**Issue Presented**

Whether Plaintiff properly served HISD where the process server did not provide HISD with a copy of the lawsuit as required by FRCP 4.

**Standard of Review**

Under Rule 12(b)(5), a district court has “broad discretion to dismiss an action for ineffective service of process.” *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 645 (5th Cir. 1994). The Fifth Circuit reviews dismissals under Rule 12(b)(5) for abuse of

discretion. *See Inmobiliaria Buda S. de R.L.de C.V. v. Brown*, No. 21-50660, 2022 WL 118425, at \*1 (5th Cir. Jan. 11, 2022).

### **Facts**

On January 7, 2025, HISD's General Counsel, Catosha Woods, was served with a federal summons at HISD's Hattie Mae White Educational Support Center located at 4400 West 18th Street in Houston. *See Affidavit of Catosha Woods*, attached as Exhibit A, at ¶ 4. The summons contained a total of two pages that referenced "Nestor Londono v. Houston Independent School District." *Id.* Once Ms. Woods accepted service the process server left the Legal suite. *Id.* The summons did not include a copy of any lawsuit that Mr. Londono had filed against HISD. *Id.* When Ms. Woods realized that she had been served a summons with no lawsuit attached, she quickly ran out to the hallway to catch the process server before he left the building. *Id.*

She caught him at the elevator bank and asked him if the two pages that he handed her were all that were included in the service request that he received since the lawsuit was not attached. *See Exhibit A at ¶ 4.* After reviewing something on his cellular phone, he confirmed to Ms. Woods that he had only been given the two pages and that there were no additional documents. *Id.* Ms. Woods thanked him and had a member of her front office staff stamp receipt and scan the two-pages she received from the process server. A true and correct copy of the federal summons Ms. Woods received on January 7, 2025, is attached to her Affidavit as Exhibit 1.

### **Arguments and Authorities**

A Rule 12(b)(5) motion allows a party to file a motion to dismiss for insufficient service of process. Fed. R. Civ. P. 12(b)(5). Federal Rule of Civil Procedure 4 requires the plaintiff to serve the defendant with a copy of the lawsuit in order for service to be effective. Fed. R. Civ. P. 4. District courts “cannot exercise jurisdiction over a defendant [who] has not been served properly.” *Topstone Comms., Inc. v. Xu*, 603 F. Supp. 3d 493, 496 (S.D. Tex. 2022) (citation omitted). “In the absence of valid service of process, proceedings against a party are void.” *Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th Cir. 1981).

Here, the affidavit of Catosha Woods confirms that HISD was not served with a copy of the lawsuit, and therefore service was not properly effectuated upon HISD.

### **Prayer**

Defendant Houston Independent School District requests that its Motion to Dismiss pursuant to Rule 12(b)(5) be granted, and that the Plaintiff’s claims against HISD be dismissed.

Respectfully submitted,

SPALDING NICHOLS LAMP LANGLOIS

/s/ Paul A. Lamp \_\_\_\_\_

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ATTORNEY FOR DEFENDANT HISD

**CERTIFICATE OF SERVICE**

I certify that on January 28, 2025, I electronically filed the foregoing document with the Clerk of Court *via* e-file and served all counsel of record and addressed as follows:

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